

**RULES, ENACTMENTS AND INTERGOVERNMENTAL RELATIONS COMMITTEE  
MINUTES**

**TUESDAY, APRIL 23, 2013  
3:30 P.M.**

PRESENT: L. Stephen Brescia, Chairman  
Michael Amo, Jeffrey D. Berkman, Melissa Bonacic, Katie Bonelli, Kevin W. Hines  
Thomas Pahucki

ALSO

PRESENT: Michael R. Pillmeier, Chairman  
Mike Anagnostakis, Legislator  
Patrick J. Berardinelli, Legislator  
Daniel G. Castricone, Legislator  
Myrna K. Kemnitz, Legislator  
Michael D. Paduch, Legislator  
Antoinette Reed, Legislative Counsel  
James O'Donnell, Deputy County Executive  
David L. Darwin, County Attorney  
Susan Bahren, Commissioner, Board of Elections  
David Church, AICP, Commissioner, Planning Department  
Megan Tennermann, Planning Department  
Timothy Tucker, Budget Analyst  
Craig Brown, Orange County Bar Association

Mr. Brescia opened the meeting at 3:30 p.m. and requested that everyone stand for the Pledge of Allegiance to the Flag. All members were present.

The last item on the agenda was a discussion on reapportionment of the Legislative Districts.

Mr. Brescia stated that it was his understanding that there was another revised map that the department of planning would be presenting. He added that after a discussion with Legislative Counsel it was his understanding that they were now beyond the deadline no matter what they do other than going with the existing districts as their time table has passed and they may want to go into executive session under section (d) of the open meetings law to discuss the legal ramifications they may encounter.

Legislative Counsel Reed addressed the committee and explained that they have gone through part of the process with a proposed reapportionment map that was subject to a public hearing and heard the public's comments and it was those public comments that were brought to the rules committee who then considered all the comments that were made. It was also the Rules Committee that directed the Department of Planning to go back and revisit the reapportionment map and to address some of the issues in the minority populations as revamped by the census of 2010 specifically in the Cities of Newburgh and Middletown. In the

Newburgh there was a large increase in the Latino population a decrease in the African American population, they then asked them to adjust those lines considering the comments of Dr. Benjamin and Mr. Simon from SUNY New Paltz, the public, members of the NAACP and Democratic Alliance coming back with a revised map addressing the polarity and majority in the City of Newburgh and a minor adjustment in the city of Middletown and after the Rules committee convened there was an added adjustment in one of the Legislative districts the Town of Monroe. That map was then reduced to a new local law with meets and bounds descriptions for all the new Legislative districts and brought before the full Legislature on April 5, 2013 with additional public participation in regard to that map and after consideration by the Legislature a vote was taken on that local law and was defeated 10-10 for failing to obtain a majority. It was her understating that while she was away new maps had been drawn again to be considered by the Legislature, but unfortunately they have a time issue. Once they pass a local law for redistricting they must then pursuant to Municipal Home Rules section 24 a local law reapportioning County Legislative districts are subject to a permissive referendum and under the Charter and Municipal Home Rule, once a local law is adopted by the Legislature it must go before the County Executive for his review, he does not have to have a public hearing but it does not say that cannot have one because under municipal home rule it's the charge of the Legislature to have the public hearing and they have done so. Once a local law is passed on redistricting the County Executive has thirty days to approve it, veto or nothing and wait for the thirty days to expire and if he does nothing the local law would be adopted and if the local law is vetoed it would then be up to the Legislature to override the veto with a two-thirds vote. If he approves it and they get the approval process they must then wait forty-five days as per Municipal Home Rules section 24 because this Legislation would be subject to ea permissive referendum and for a petition to be filed asking that this legislation be put to a vote by the populist at the elections and wait that period and to provide the public with the opportunity to file that petition. During that point and time they are in the period for which the circulation of petition must be done and anyone who wishes to run would then be at a disadvantage, because they do not know what district the are running in so logistically a practically what do they do because what are their petitions for who are they soliciting petitions for and if the local law is not adopted do they go back to the old one. what this does in create confusion for the candidates and the public while calling into question the petitions in and of themselves and at the end of the day they could be subject to litigation because people will not know what district they are running under. At this time they know the lines that are set in the old districts and if anyone would like to run for a position they would know what the boundaries are for that Legislative district and if they pass a new local law for new Legislative districts people may be unsure if it's in fact a real district during the time that they are circulating petitions and that would be the problem they face and could cause confusion and litigation.

Mr. Pahucki suggested they consider the current Legislative districts as they are and work on new maps between now and the next election because if people are going to sue they will do so anyway so the practicality would be to let the court decide and there term as outlined by the Charter is a four year term and let the court wrestle with two definitive issues, one man one vote and would the Charter stand by following the Legislative term for a year because right know he cannot see anyway they can have a Legislative race. But what would happen if they don't take the one and only safe step to say that the current Legislative districts

as they fall within the time parameter set by the state with petitions being circulated because anything short of that makes the electoral process impossible.

Mr. Brescia stated that he was inclined to agree with Mr. Pahucki's because at this late juncture and as of that morning he had thought they could vote on one of the other maps and they only had one public hearing because of the timeframe they were given.

Mr. Pahucki added that they must have a twenty-one seat Legislature come January 1, 2014 and they must have a county executive and the government must be ready to run regardless of what any special interest group would like to do. In his opinion, if they run on the current districts they may be violating the one man one vote rule, but at this point and time he does not see any other options and they would have to take the challenges and go to court. So he would suggest that this next time around they use a bi-partisan commission to look at it.

Mr. Brescia agreed that whoever is in office in 2014 should begin that process.

Mr. Amo asked for clarification on when they run.

Mr. Pahucki replied that he believes the Charter would prevail that they run for a four year term, but it would be up to a court of law to rule on that if they are challenged.

Legislative Counsel Reed commented on Mr. Pahucki's comment that they may be violating the one man one vote rule, and at this point that is a misstatement because the Legislature has made the effort to do a reapportionment map, but it failed. Anyone can challenge anything the Legislature does but it would have to prevail in a court of law and at this time there are no challenges so they will proceed and they have made a good faith effort to comply with the law on many levels. It did not pass and at this point they are out of time and if someone chooses to bring forth a lawsuit they may do so and they would defend the lawsuit as she believes what they have done was valid and in how they have approached this was correct and if they prevail in court the court will direct them in what they must do.

Mr. Brescia added that if that was the consensus of the committee it would be mute to have Ms. Tennermann do her presentation.

Mr. Berardinelli asked if this were to go to court which map would the court decide on.

Legislative Counsel Reed replied that there was no map approved by the legislature that would be subject to review.

Mr. Berardinelli asked if it would then be for a four year term.

Legislative Counsel Reed replied that it would be.

Mr. Berkman replied that he sees this differently in that he has regrets on the whole process and in hind sight they would have been better served if they had had a

bi-partisan commission established months or years ago. There is already a problem with public confidence and now specifically with the Legislature in regard to the lines and the way that it has been handled, so he would ask that Chairman Brescia allow the public to express their views especially those that are particularly unhappy are entitled to have their voice heard. When the vote was defeated both he and Mr. Paduch went to Planning to see if they could incorporate some of the concerns that had been expressed at the public hearing and the conversations from the Legislative session and to see if they could make it more acceptable to the majority and at that point they suggested that the districts be modestly changed as it was done in the past to be more reflective of the demographics. They all seem to have an interest in ensuring everyone's voting rights in Orange County and the key seemed to be a recalibration of the lines in Newburgh. At this point he has statements that say they have run out of time but the sad part would be that it was unavoidable but they are where they are and if passes like this occur that they go back to the one known map that's already filed and on public record and the one they ran on the last time. He would presume that they are obligated to stick with that until this is sorted out and regardless of which parties or groups are elected next time he would certainly hope that one of the first things acted upon would be to change the Charter and to establish a commission. He would not agree completely with Mr. Pahucki that it should be completely non partisan or to hire out with some saying that the municipalities should be kept whole as much as possible, some stating that they need to make sure they act on their affirmative duty to ensure that minorities were be given a fair opportunity to be elected, a goal of maintaining incumbents with out clashing and there was some validity to all of these and with having a bi-partisan commission with his suggestion that elected officials that serve jointly pick three others that are not political.

Mr. Pahucki suggested they hire a consultant.

Mr. Berkman replied that he was tired of hiring consultants.

Mr. Brescia replied that he does not disagree with what Mr. Berkman has said and the next Legislature could certainly look into it but the Charter change Mr. Berkman was speaking of was only brought to the Rules Committee two or three months ago and the process was over by that time.

Mr. Berkman replied that there's an appointment power specified in the Charter and he did bring it up over a year ago and again in November and February.

Mr. Brescia responded that he remembers February and he does not like the composite of Mr. Berkman's committee with three private citizens and he could see them doing what they need to do to comply especially in the inner cities. They thought that they were doing that they listened to the fourteen public speakers the night of the public hearing with most being from the Democratic Alliance and Mr. Benjamin and they certainly want to do that. One of the main things would be the 17,680 residents in each respective district and he thinks that Chairman Pillmeier and Ms. Bonelli did a good job with the Planning Department to do that. He added that none of them want to see to incumbents run against each other but that's not one of the criteria they can look at when this is being done, so they cannot say that it's not

considered because it always is and next year they can certainly look at an independent commission however it may be comprised.

Mr. Berkman stated that it would not be solved today but everyone has there priorities and for him it was that there are urban and rural districts and he wanted to ensure that there was at least one in the City of Middletown and one in the City of Newburgh that was totally within the confines of the boundaries of that municipality and the tweaked map did not do that and in Middletown it divided out and connected it to the municipalities outside would have not had any district in the confines of the city if it had been adopted.

Mr. Brescia asked if he was referring to the map at the April 5<sup>th</sup> session.

Mr. Berkman replied that it was a suggestion and the best way to handle this would be to have several public hearings and not just one to solicit the input of a wide diverse group of people throughout the county and allow them to feel that they have a stake in the outcome and that they have been listened to and the opportunity to participate and however well intended it was to have prepared map brought top them at the eleventh hour and to have them vote on it was not an effective strategy.

Mr. Brescia agreed that he would be in favor of more public hearings and he would like to see it done by election districts as opposed to Mr. Benjamin's suggestion because they may end up having to create many more election districts and very costly.

Ms. Bahren expressed her appreciation in that the committee has over the years tried to stay within election districts and because of the ward districts in the city of Newburgh they have had to create three very small districts in Newburgh and will create additional staffing issues that were not anticipated.

Mr. Brescia added that two representatives from the Board of Elections should be involved in the process so that they understand what the costs could be and while they want to be democratic it needs to as cost effect as possible.

Ms. Bahren added that if this was to be looked at again they would need to consider that factor in the City of Newburgh for the next time.

Mr. Berardinelli stated that the amount of work and effort that was applied to the first map by Chairman Pillmeier and Ms. Bonelli must be acknowledged. He did not think that anyone really objected to that that map and the way that it was laid out as it was fair with the number of 17,500 prevailing throughout the whole district, but it was not to be. The attempt of the March 18<sup>th</sup> map was to create a Latino and Afro-American district which did not sit well with him, the Democrats or two other Republicans and brings them to today's map attempt which had the input of both Messrs. Berkman and Paduch and is a lot cleaner looking as it relates to the City of Newburgh and he does not think that Mr. Burger was asked his opinion on this and he knows that he was not asked his opinion or if he would have sat with them to discuss Newburgh as he and Mr. Burger are in the trenches of the City of Newburgh and are very knowledgeable on the streets and population or the city of Newburgh

administration or counsel were asked. They were only presented with the map today and he was prepared to vote "no" because the City of Newburgh was not being done justice but he would agree that a map must be drawn with the inclusion of many groups of people and he would believe that as that go down the road of creating districts that they are not going to be able to satisfy everyone because they are not going to be able to pull the west side and east side of the county districts that they currently have and tweak them without it not affecting other parts of the county. Ultimately someone will have to say this is the mark and this is what they are going to vote on and best represents the districts in Orange County. He commends them on their work and in going to the Planning Department and in voicing their concerns but he would have appreciated it more if Mr. Burger and himself had been asked to join them. His concern now would be that the districts they have now would not be impacted by the courts and as Legislative Counsel Reed explained so articulately the status they are in. They must come to grips with where they are at this point because the first day to sign petitions would be June 4<sup>th</sup> so they need to get on with the work that must be done this year and worry about the courts either this year or next year.

Mr. Brescia commented that the districts were basically the same but he was unsure if Mr. Berardinelli's had changed due to the wards in Newburgh.

Mr. Berardinelli replied that there are two districts in the city of Newburgh 4 and 6 there was no impact to district 4, but depending on what they determine as impact because he does not think the population in Newburgh has changed that much in either area to say that this was a total Latino district or that this is a total Afro-American district as he feels that the city of Newburgh is fairly diverse with 28,900 thousand people and are members of the Newburgh community not members of the Afro-American or what would have been the Latino community and that's important because they took the two districts that were running north and south and flipped them to east west which did a disservice to district 4 and when it was explained the members of the city council were pleased that they acknowledged the fact that those changes were a detriment to the city of Newburgh and its population. They have a year to get through until the next election and hopefully the new Legislature will sit down and seriously look at the direction they want the county to go in and to do the right thing for all of Orange County.

Ms. Donnery asked Chairman Brescia to respectfully consider the opportunity they have with the people in the room and an Attorney with a valid question to ask and those that have been in a period to be able to listen to one another and to possible not have to face litigation in the future and maybe there's something they can here, so she would ask that he please reconsider and allow those that need to speak.

Mr. Brescia replied that he does respect her request, but he will not allow it and get into a potential litigation contest here today.

Mr. Paduch added that when they voted on April 5<sup>th</sup> they heard a lot of comments from the public and they could have also heard more today. In regard, to Mr. Berardinelli's statement that he was not invited to a meeting, he was not invited either he took

it upon himself as a Legislator to go to the Planning Department because their jobs are to make it right if they can. He did not get invited and he did not force his way in they respectfully went to the Planning department to see if there were any changes to made in the district lines to address the concerns they heard at the hearing and to see if there was time left to make something happen that everyone was ok with. That was the purpose of himself and Mr. Berkman going to the Planning Department and when they change maps regardless if it's Newburgh or Middletown it has impact on other districts and in this case it impacted five other districts which could have made some Legislators happy or possible not happy and the fact that they worked on it and were here to present it with the public here to see it and maybe it does not "fly" but it was an effort on behalf of the Legislature to try and open up the process and if it does not work it does not work and to just dismiss it for the additional that the Planning Department has done he's disappointed because of the hard work that was put into it while trying to address the concerns and whether this map has done the perfect job, probably not and he's not sure if any map would but the fact is that there is a map prepared and the opportunity to see the changes that were talked about in Newburgh whether they are right or wrong can be heard here today also. With that he's very disappointed that they are just going to brush it off without the opportunity to at least review what has been done.

Mr. Pahucki joined in stating that this was the worst map he has seen in his life, but the issue here is that they are "out of time" and it is that simple. In regard to public speaking bring them in when they are drawing the map for the next term.

Mr. Amo agreed with Mr. Pahucki and this was the second time he had been through the process and he would commend the initial map as it was a valid attempt to begin and if they had followed it as offered they would not be out of time and he was also disappointed in the process and his district will be severely damaged by running o the old line.

Mr. Berkman added that the problem was the failure of process and if the first maps were not that bad and acceptable to him or others it still does not address the issue of the failure of process which was the lack of inclusion. He's not making any condemnations and he understands how it worked ten years ago and it has been faulty all the times he has seen it. This was not the exception to the rule it just reinforces that mistake in process and he would not want to dismiss that process whether it was good or bad. He added that there are individuals outside the legislature who want to express their views and for their community to have a voice and is the essence of democracy and fair. He and Mr. Paduch did not draw new maps and not invite anyone they were not invited either into the process and that was part of the problem with no place to comment other than what was handed to them. Mr. Paduch and I saw a 10-10 tie vote and a rejection and as a modest idea went to Planning and asked if they were to an election district and swap it what would the impact be on the demographics and does it make it fairer, does it address the concerns they heard in the public hearing and before the vote. He must give respect to the Planning Department and all the hard work that went into because as it turns out one little change of a district has a ripple effect on four, five or six districts and he understands that. It was not only that the maps were not great it as also that the process was not fair and needs to be improved and they need to commit themselves to having a fairer process, open and including all segments of the community so that they can buy

into this and accept the maps without feeling frustrated that their communities voices are not being heard.

Mr. Brescia responded that their process certainly needs improvement, but he would dare say that their process probably was not much different then the other sixty-two counties in New York State. The incoming Legislature could certainly work to improve it and he's sure that there are a lot of counties in the state that have done a lesser process than they have done and a lot less inclusive then them. He did not hear anyone reeling against the assembly and no one got "screwed" more in Orange County than the Towns of Montgomery and Crawford and he wishes their had been an outcry last year in regard to that.

In regard to Mr. Berkman's comments, Mr. Amo stated that Mr. Berkman's points were legitimate.

Ms. Bonelli also agreed with Mr. Pahucki in that they have run out of time and that he was absolutely correct in everything that he has said. She was asked by the chairman to do a task and she felt that she did a very task in looking at it with a great deal of technical assistance from the Department of Planning and she finds it ironic that after taking into consideration the comments that were made at the public hearing and went back with everyone in an uproar when they began to see what had happened with the tie vote. Then Messrs. Paduch and Berkman asked to take a careful look at this again not knowing what the timeframe would or would not allow which was great. This has been going on for awhile and could have input on certain things as they knew what was going on. After going through that exercise both Mr. Paduch and Mr. Berkman saw that it was not just any easy swap of one section for another and when they moved one little part it affected at the other end of the county and they had a better appreciation of what was going on. Furthermore, the percentages in the map that Ms. Tennermann was prepared to work on today did not change very much from the map that was a 10-10 vote, so they really did not gain anything by it and going all the way to the other end of the county and the changes they did not get anything from it. To have a discussion on a map, that the four of them could not even agree on and as Mr. Pahucki previously stated they have run out of time. It has been a learning lesson and she finds it ironic that a lot of her colleagues have come up to her and said that they think the first map is the better map, but know one was prepared to support that and here they are today.

Ms. Donnery asked if she could asks a question for Attorney Susseman in if they adopt a new map and a petition for referendum does the election in November proceed on the new map.

Legislative Counsel Reed replied, no, they would need to wait to find out what happened on the referendum so they would need a time for that also.

Mr. Anagnostakis also agreed with Mr. Pahucki and Ms. Bonelli in that the maps they will have in place on June 4<sup>th</sup> when petitions start will be the legal map in place which is the current Legislative districts which would be what they would run on. But he would also agree with the people who have stated that things need to be done differently in the future and to make sure that it's done in the right way and he would hope that they do. One way that



they could begin doing things differently would be to listen to concerns citizens and he understands that it would be his prerogative but he would also ask that he allow them a minute each to be heard.

Mr. Brescia replied that he would not allow it today, but they could certainly speak at the floor of the Legislature as they did at the last regular meeting and the public hearing and in addition, they can speak at the April 2<sup>nd</sup> session after the meeting as it would be a non agenda item.

On motion of Mr. Pahucki, seconded by Mr. Amo, the meeting adjourned at 4:59 p.m.

DRAFT